

NOTICE OF PROPOSED ACTION

Distributor Administrative Fee

TITLE 14. NATURAL RESOURCES DIVISION 2. DEPARTMENT OF CONSERVATION CHAPTER 5. DIVISION OF RECYCLING

NOTICE IS HEREBY GIVEN that the Department of Conservation (Department), Division of Recycling (Division) proposes to adopt amendments to the California Code of Regulations (CCR). Commencing with Subchapter 4, Chapter 5, Division 2, Title 14 of the CCR, the Division will propose permanent regulations, after the consideration of all comments, objections or recommendations. The proposed amendments are as follows:

Subchapter 4.

Article 1. Distributor Requirements

§2305. RECORDKEEPING

Amended Subsection 2305 (c): Has been amended to reflect the change in the revision date of the Distributor Report Form (DR-3). The prior revision to this form was made in October 2006. This amendment is necessary to reflect that the most recent amendment to this form is July 2007.

§2310. REPORTING

Subsection 2310 (a)(1): Has been amended to reflect the change in the revision date of the Distributor Report Form (DR-3). The prior revision to this form was made in October 2006. This amendment is necessary to reflect that the most recent amendment to this form is July 2007.

Subsection 2310 (a)(2): Has been amended to reflect the change in the revision date of the Distributor Report Form (DR-3). The prior revision to this form was made in October 2006. This amendment is necessary to reflect that the most recent amendment to this form is July 2007.

Subsection 2310 (a)(2)(B): Has been amended to show the prefix to be added to the identification number required on the distributor reporting form (DR-3). Prior to the passage of AB 1763/Committee on Natural Resources (Chapter 202, Statutes of 2005), the reporting deadlines differed for distributors of all beer and

malt beverage containers, and distributors of other than beer and malt beverage containers. Distributors were required to submit their Distributor Report (DR-3) with an assigned identification number with either a prefix of "DB" to identify a distributor of all beer and malt beverage containers, or a "DS" prefix for a distributor of other than beer and malt beverage containers. AB 1763 amended the reporting deadlines to coincide for both types of beverage distributors. Because the reporting deadlines now coincide, it is no longer necessary to identify the type of distributor by the "DB" or "DS" prefix. Therefore, all distributors of beverage containers may utilize the "DS" prefix when completing the Distributor Report (DR-3).

§2320. PAYMENTS

Amended Subsection 2320 (a): Has been amended to reflect the change in the administrative fee withheld by distributors of beverages in California. This change will remove the percent shown in the regulations and instead reference the amount to be withheld as shown in statute.

Deleted Subsection 2320(e): Has been removed because the amount of the administrative fee is now referenced in statute.

Renumbered Subsection 2320(f): Has been renumbered to 2320(e) due to the deletion of old subsection 2320(e).

Renumbered Subsection 2320(g): Has been renumbered to 2320(f) due to the deletion of old subsection 2320(e), and the renumbering of old subsection 2320(f).

INFORMATION IS AVAILABLE UPON REQUEST. Copies of the express terms of the proposed action, the initial statement of reasons, and all of the information upon which this proposal is based are available upon request. The rulemaking file is available to the public for review during normal business hours at the Division of Recycling, 801 "K" Street, 19th Floor, Sacramento, California. For general or substance questions regarding this file, please contact the agency contact person, Cheryl DuBose, at (916) 323-0728. The backup agency contact person for this rulemaking file is Marty Nold, who may be contacted at (916) 327-2761. Any technical inquiries shall be referred to the appropriate staff to ensure a prompt response.

SUBMITTING WRITTEN COMMENTS. The written comment period permits any interested person, or their authorized representative, to submit written comments addressing the proposed amendment to the Department. Written comments, which offer a recommendation and/or objection, or support the proposed amendment, should indicate the amended section to which the comment or comments are directed. Written comments should be sent to the Department and received before the close of the public comment period, no later than

5:00 p.m. on April 23, 2007. Additionally, we request that written comments reference a subsection or section of the proposed action. Written comments received by the Department after the close of the public comment period will not be responded to in the rulemaking file. Submit your written comments to: Cheryl DuBose, Distributor Administrative Fee Permanent Regulations, Department of Conservation, Division of Recycling, 801 "K" St., MS 19-02, Sacramento, CA 95814. During the 45-day comment period, written comments may also be E-mailed to: DORRegulations@consrv.ca.gov, or faxed to (916) 323-0732.

PUBLIC HEARING. A public hearing has not been scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period.

SUBSTANTIAL REVISIONS WILL REQUIRE A RENOTICE. Following the public comment period, the Department will adopt the regulations without further notice. However, if the Department chooses to substantially alter or revise the proposed regulatory action, a revised notice, called a renote, and the amended version of the proposed text of the regulations will be made available to the public for another public comment period for fifteen (15) days prior to its adoption. Those persons who testified at the public hearing, if held, or submitted written comments at the public hearing, or whose comments were received by the Department during the public comment period, or who requested notification from the Department of the availability of changes to the text of the proposed regulations, will be sent any renotices.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Under the existing law, the California Beverage Container Recycling and Litter Reduction Act (Act) encourages recycling of specific beverage containers and the reduction of littered beverage containers along the State's highways. Under this Act, the Department through the Division, is responsible for administering the Act and protecting the integrity of the California Beverage Container Recycling Fund (Fund).

The Department allows distributors to retain an administrative fee that is a certain percentage of the California Redemption Value (CRV) they must pay on beverage containers they sell in California. The passage of AB 3056 increased the amount of money (administrative fee) that distributors may deduct from their redemption payment to the Division, to cover their administrative costs. The administrative fee was increased from one percent (1%) to one and one half percent (1.5%) of the reported redemption payment. This permanent regulation is necessary to remove a stated administrative fee, and clarify that the distributor may deduct an administrative fee from their redemption payment..."as authorized in Section 14574 of the Act". This clarification will prevent future promulgation of regulations if the amount of the administrative fee deduction is again changed in

statute, because this regulation change refers to the statute that authorizes the deduction.

Emergency regulations were filed with the Office of Administrative Law (OAL) and became effective on December 5, 2006, and will expire on April 5, 2007, implementing changes to the distributor requirements in Sections 2305, 2310, and 2320, as established by AB 3056. These proposed regulations will make the emergency regulations permanent, clarifying the distributor administrative fee provisions, consistent with the changes enacted in AB 3056. In addition, these proposed regulations will allow the Department to make necessary changes to the DR-3 reporting form used by distributors, to reflect a change in the CRV rate that will take effect July 1, 2007. Effective that date, the CRV will increase from 4-cents to 5-cents for beverage containers with a capacity of less than 24 fluid ounce, and from 8-cents to 10-cents for beverage containers with a capacity of 24 fluid ounces or more.

In addition, AB 1763/Committee on Natural Resources (Chapter 202, Statutes of 2005,) amended the reporting deadlines to coincide for both types of beverage distributors. Because the reporting deadlines now coincide, it is no longer necessary to identify the type of distributor by a "DB" (distributors of all beer and malt beverage containers), or "DS" (distributors of other than beer and malt beverage containers) prefix. Therefore, these regulations will clarify that all distributors of beverage containers may utilize the "DS" prefix when completing the Distributor Report (DR-3).

AUTHORITY

These regulations are submitted pursuant to the Department's authority under Public Resources Code Sections, 14530.5(b) and 14536.

REFERENCE

Public Resources Code Sections 14530.5, 14537, 14550(b) and (c), 14560, 14561, 14571.9, 14572.5, and 14574.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: The Department has determined that adoption of these proposed regulations do not impose any new mandates on local agencies or local school districts.

Cost or savings to any state agency: No savings or additional expenses to state agencies are identified because the implementation of statute is financed by the beverage container recycling program itself.

Costs to any local agency or school district which must be reimbursed in accordance with Government Code §§17500 through 17630: The Department has determined that the adoption of these proposed regulations does not impose any additional cost obligations on local agencies or on local school districts.

Other non-discretionary cost or savings imposed upon local agencies: No other non-discretionary costs or savings to local agencies have been identified.

Cost or savings in federal funding to the State: No costs or savings in federal funding to the state have been identified.

Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: The Department has determined that no significant impact to California businesses will result from the adoption of this proposed regulatory language. These proposed regulations serve to clarify and make specific existing statutory requirements.

Potential cost impact on private persons or directly affected businesses: The Department has determined that no significant impact to California private persons or directly affected businesses will result from the adoption of this proposed regulatory language. These proposed regulations serve to clarify and make specific existing statutory requirements.

Creation or elimination of jobs in California: The Department has determined that the adoption of these regulations will not:

- Create or eliminate jobs within California;
- Create new nor eliminate existing businesses within California;
- Expand businesses currently doing business in California.

Significant effect on housing costs: The Department has determined that the adoption of these regulations will have no significant effect on housing costs.

Effects on small businesses: The Department has determined that the adoption of these proposed regulations will insignificantly affect small businesses. These proposed regulations serve to clarify and make specific existing requirements contained in statute. These proposed regulations do not mandate actions upon private persons or businesses, but rather clarifies existing statutory mandates.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative that it considers or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. The Department has not identified any adverse impacts resulting from these proposed regulations.

FINAL STATEMENT OF REASONS

A copy of the final statement of reasons may be obtained, when it becomes available, from the agency contact person or backup contact person identified in this notice.

ACCESSING INFORMATION REGARDING THIS FILE ON THE DEPARTMENT OF CONSERVATION WEBSITE

The text of the proposed regulations, the Notice of Proposed Action, the Initial Statement of Reasons and the Final Statement of Reasons, when available for review, will be on the Department of Conservation website at:
www.conservation.ca.gov.